

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Electric Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Retained Generation Fuel Procurement, and Other Activities for the Period January 1 through December 31, 2012.

Application 13-02-023  
(Filed February 28, 2013)

**REPLY COMMENTS  
OF THE OFFICE OF RATEPAYER ADVOCATES**

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## I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Office of Ratepayer Advocates (ORA) hereby submits these reply comments to Pacific Gas and Electric's (PG&E) Opening Comments on the Administrative Law Judge's *Proposed Decision on Pacific Gas and Electric Company 2012 Energy Resource Recovery Account Compliance Review*, filed on March 24, 2016 (PG&E's Opening Comments).

## II. DISCUSSION

ORA disagrees with PG&E's proposed corrections regarding the forced outages at Diablo Canyon Power Plant (DCPP) facility and Belden Powerhouse as well as its administration of Amedee Geothermal Venture 1 (Amedee) and Wendel Energy Operations 1 (Wendel) qualifying facilities (QF) contracts.

### A. **The Commission should adopt the PD's original language regarding PG&E's administration of its QF contracts in the Proposed Decision.**

PG&E's proposed corrections<sup>1</sup> on its administration of Amedee and Wendell contracts would have the Commission find PG&E prudently administered its QF and non-QF contracts. The record does not support such a finding. PG&E admits it overpaid these contracts because it failed to adjust the meter constant after Lassen Municipal Utilities District notified PG&E of a change of voltage on the transmission line.<sup>2</sup> Despite its overpayment, PG&E argues its administration of Amedee and Wendel contracts was reasonable and the proposed disallowance should be rejected because "[t]he PD ignores the fact that similar situations had not occurred previously for these facilities and

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<sup>1</sup> PG&E's Opening Comments, Appendix A: Recommended Changes to Proposed Decision, pp. A-2 to A-4.

<sup>2</sup> PG&E's Opening Comments, p. 14.

that...PG&E identified the issue, it acted promptly to correct the error and to recover what it could of the overpayments.”<sup>3</sup>

PG&E’s arguments should be rejected. Acting promptly when PG&E discovered its own error and attempting to recover some of the funds it overpaid to the two facilities should not absolve the utility from complying with Standard of Conduct 4 to ensure its contracted resources are operated in a manner that produces the lowest possible cost for ratepayers. The fact remains PG&E was not able to recover all—or even a substantial portion—of the overpaid funds from the two counterparties and this situation arose solely through PG&E’s error. The utility should assume responsibility for this loss, not the ratepayers. ORA agrees with the PD’s conclusion, which states:

We find that a reasonable manager would have ensured that the change in transmission voltage was promptly reflected in accurate meter constant at each facility and would take responsibility for this error and either pursue recovery or assume responsibility for the loss, rather than try to collect those funds from a party that had nothing to do with the transactions or the settlement.<sup>4</sup>

**B. The Commission should adopt the PD’s holding regarding PG&E’s management of its two Utility-Owned Generation facilities.**

PG&E’s proposed corrections<sup>5</sup> on its management of DCPD and Belden Powerhouse would have the Commission find PG&E prudently managed its utility-owned generation (UOG). PG&E faults the PD because “the PD disregards: (1) all of the evidence in the record, except for the RCE; and (2) Commission precedent in earlier ERRR compliance proceedings.”<sup>6</sup> PG&E points out the Commission has only

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<sup>3</sup> PG&E’s Opening Comments, p. 15.

<sup>4</sup> Proposed Decision, p. 75.

<sup>5</sup> PG&E’s Opening Comments, Appendix A: Recommended Changes to Proposed Decision.

<sup>6</sup> PG&E’s Opening Comments, p. 4.

disallowed replacement power costs related to UOG outages in two proceedings.<sup>7</sup> PG&E's arguments should be dismissed.

The Commission evaluates each case on its own facts. The PD appropriately applied the facts to the reasonable manager standard and reached a finding supported by the record. Furthermore, there is a long standing principle, affirmed by the California Supreme Court, that the Commission is not bound by its prior decisions. In Decision (D.) 93-12-051, the Commission held, "The Commission has the discretion to reach different conclusions in different cases as a matter of policy because of their unique facts, as noted by the California Supreme Court, as early as 1925, in *Postal Tel-Cable Co. v. Railroad Com.*, 197 Cal. 426, 436."<sup>8</sup> Quoting the California Supreme Court in *Postal Tel-Cable Co.*, D.93-12-051 states:

The departure by the Commission from its own precedent or its failure to observe a rule ordinarily respected by it is made the subject of criticism, but our reply is that this is not a matter under the control of this court. We do not perceive that such a matter either tends to show that the Commission had not regularly pursued its authority, or that said departure violated any right of the petitioner guaranteed by the state or federal constitution. Circumstances peculiar to a given situation may justify such a departure.<sup>9</sup>

The Commission affirmed this holding again in D.06-12-040: "it is not legal error for the Commission to deviate from prior Commission decisions because the Commission is not bound by its own precedent."<sup>10</sup> Consistent with the holdings above, the Commission

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<sup>7</sup> PG&E's Opening Comments, p. 2.

<sup>8</sup> 1993 Cal. PUC LEXIS 735; 52 CPUC2d 677, p. 6.

<sup>9</sup> 1993 Cal. PUC LEXIS 735; 52 CPUC2d 677, pp. 6-7, citing *Postal Telegraph-Cable Company v. Railroad Commission of the State of California* (1925) 197 Cal., pp. 426, 436-437.

<sup>10</sup> 2006 Cal. PUC LEXIS 422, p. 35.

should dismiss PG&E's argument that the PD ignored Commission precedent in earlier ERRRA compliance proceedings.

Additionally, PG&E's argument the PD is erroneous because it disregards all of the evidence in the record, except for Root Cause Evaluation (RCE), is not persuasive. In the case of Belden Powerhouse outage, the PD addresses PG&E's arguments but finds them unconvincing, especially since PG&E's own Root Cause Analysis (RCA) contradicted PG&E's statements on numerous occasions.<sup>11</sup> Accordingly, ORA agrees with the PD's conclusions:

PG&E has not provided a convincing rebuttal to ORA; nor has PG&E explained why its own RCA offers conclusions and corrective recommendations that are consistent with ORA's analysis...[W]e conclude that the evidence supports ORA's position that PG&E failed to show that it acted as a reasonable manager would have acted with respect to its actions *prior* (emphasis added) to the forced outage at the Belden powerhouse. Ratepayers should not pay for the associated cost of replacement power.<sup>12</sup>

Similar to Belden, the PD evaluated PG&E's briefs and exhibits in conjunction with PG&E's own RCE on the forced outage at DCPD but found PG&E's arguments either inconsistent or contrary to the conclusions of RCE.<sup>13</sup> The PD, after considering PG&E's arguments, disagreed with the utility:

[I]n large part because PG&E's root cause evaluation of the DCPD outage does not support PG&E's assertion that its managerial decisions were reasonable given the circumstances and the facts available to PG&E prior to the outage. Specifically, we demonstrate that each of PG&E's substantive rebuttals to ORA is contradicted by facts contained in the root cause evaluation. For this reason, we find

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<sup>11</sup> Proposed Decision, pp. 26-32.

<sup>12</sup> Proposed Decision, pp. 31-32.

<sup>13</sup> Proposed Decision, pp. 51-56.

that the evidence supports our conclusion that PG&E did not comply with the reasonable manager standard.<sup>14</sup>

No legal error exists. ORA supports the PD's conclusions and legal analysis along with the \$1,324,811 disallowance for the forced outage at Belden Powerhouse and \$3,238,185 disallowance for the forced outage at Diablo Canyon Power Plant.

### **III. CONCLUSION**

ORA supports the findings and conclusions of the Proposed Decision and recommends the Commission reject PG&E's proposed corrections.

Respectfully submitted,

/s/ ZHEN ZHANG

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<sup>14</sup> Proposed Decision, p. 50.